IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 33836 of 2005(C)

OS.87/2002 of MUNSIFF MAGISTRATE, ERATTUPETTA

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PETITIONERS:

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1. SANJAY MITRA,
   S/O.NIRADU BARAN MITRA,
   RESIDING AT 64-KALINDI HOUSING ESTATE.P.O,
   LAKE TOWN, CALCUTTA.

2. SUMITRA MITRA,
   W/O.SANJAY MITRA,
   RESIDING AT 64-KALINDI HOUSING ESTATE.P.O,
   LAKE TOWN, CALCUTTA.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL

RESPONDENTS:

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1. JERSON, S/O.ANTONY,
   KADAPLACKAL HOUSE,
   MEENACHIL KARA, MEENACHIL VILLAGE.

2. NAIGIL, S/O.THOMAS,
   NADIYAKALAYIL HOUSE,
   VAGAMON, TEEKOY VILLAGE.

BY ADV. SRI.P.C.HARIDAS
SRI.R.DIVAKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT IN OS NO.87/02 DT.25.10.02 FILED BEFORE THE MUNSIFF, MAGISTRATE COURT, ERATTUPETTA.

EXT.P2 : TRUE COPY OF THE WRITTEN STATEMENT DT.1.2.03 IN OS NO.87/02 FILED BEFORE THE MUNSIFF, MAGISTRATE COURT, ERATTUPETTA.

EXT.P3 : TRUE COPY OF PLAINT IN OS NO.132/03 DT.11.11.03 FILED BEFORE THE MUNSIFF'S COURT, ERATTUPETTA.

EXT.P4 : TRUE COPY OF WRITTEN STATEMENT IN OS NO.132/03 DT. NIL FILED BEFORE THE MUNSIFF'S COURT, ERATTUPETTA.

EXT.P5 : TRUE COPY OF THE ADVOCATE NOTICE DT.14.10.03.

EXT.P6 : TRUE COPY OF ORDER DT.29.09.04 OF R.D.O, PALA.

EXT.P7 : TRUE COPY OF THE COMMISISON REPORT DT.15.10.04 IN OS NO.87/02 FILED BEFORE THE MUNSIFF'S COURT, ERATTUPETTA.

EXT.P8 : TRUE COPY OF THE AFFIDAVIT AND PETITION DT.15.10.04 IN IA NO.787/04 IN OS NO.87/02 FILED BEFORE THE MUNSIFF COURT, ERATTUPETTA.

EXT.P9 : TRUE COPY OF THE ORDER DT.28.10.05 IN IA NO.787/04 IN OS NO.87/02 OF THE MUNSIFF COURT, ERATTUPETTA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 33836 OF 2005

Dated this the 1st day of June, 2007

JUDGMENT

An application for joint trial submitted by the petitioners who were plaintiffs in OS No.87 of 2002 was dismissed by the learned Munsiff by Ext.P9 order accepting the contention of the defendants. The suit filed by the petitioners, OS No.87 of 2002 is in respect of 5 acres of land in re-survey No.381 in Block No.62 corresponding to old Survey Number 2270/1/2/3 of Teekoy Village. OS No. 87 of 2002 is for injunction simplicitor seeking to restrain the respondents herein, the defendants in the suit from tress passing into the plaint schedule property. The case of the petitioners as averred in Ext.P1 plaint in OS No. 87 of 2002 is that the property of the respondents lies in old Survey No.2309/1 as correctly set out by document No.1987/93 by which the respondents' predecessor was holding the same. It is alleged that while conveying the property extending to 10.25 acres in favour of the 1st respondent in collusion with the revenue officials the survey number was shown as 2270/1/2/3 which is the survey number of the petitioner's property. This was done so as to pave way for trespassing into the petitioner's property, it is alleged. There is a similar allegation regarding the property belonging to the 2nd defendant also. The plaintiff in OS No.132

of 2003 are assignees from the 1st respondent of 3 acres of their property pending OS No.87 of 2002. Naturally all the document of assignment in favour of plaintiff in OS No.132 of 2003 shows the survey number of the property as 2270/1/2/3. Suit OS No.132 of 2003 is instituted seeking an injunction against the petitioners herein on the allegation that the petitioners are attempting to tress pass into their properties. In that suit a counter claim has been lodged by the petitioners herein seeking a decree of mandatory injunction in respect of a building portion possessed by the plaintiffs wrongly, a prohibitory injunction restraining the plaintiffs and a declaration to the effect that the title document of the defendants in OS No.87 of 2002 and also the title document under which the plaintiffs in OS No.132 of 2003 claim are not binding on the suit schedule property in OS No.87 of 2002. The petitioners filed Ext.P8 application for joint trial of OS No.87 of 2002 and OS No.132 of 2003 on the ground that common questions will arise for consideration. The application was resisted raising various contentions. The learned Munsiff by Ext.P9 order which is a cryptic one has upheld the contentions raised by the respondents and dismissed the application for joint trial.

2. I have heard the submissions of Sri.Shaji Thomas, counsel for

the petitioners, Sri.P.C. Haridas, counsel for the 1st respondent and Sri.R.Divakaran, counsel for the 2nd respondent.

3. Having regard to the rival submissions addressed before me, I am of the view that the learned Munsiff was not justified in dismissing the application upholding all the contentions raised by the respondents herein.

4. It appears to me that the view of the learned Munsiff that parties are different is only technically correct. The parties in the other suits are assignees from the parties in this suit and the assignment was pending suit. In that way, there is identity of parties. There is partial identity of the subject matter also.

5. But one submission addressed by the learned counsel for the respondents has appeal. The plaintiffs in OS No.132 of 2003 have not been put notice regarding the application for joint trial. Therefore I am not inclined to take a decision on the joint trial application . I set aside Ext.P9 and permit the petitioner to implead the plaintiffs in OS No.132 of 2003 as respondents in the application for joint trial. If an application for impleadment is filed by the petitioner within three weeks of receiving copy of the judgment the learned Munsiff will allow that application. Once that application is allowed, the learned Munsiff will take fresh

decision on the joint trial application after hearing all parties in accordance with law.

The Writ Petition is allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

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